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Legal Deptt.

GK **BRANCH**

Subject:—

Opinion on the

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File No. 35/53

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CONTENTS

Legal Department File No O. Constitution/53 (C-35)

Sr. No.	R. I. / O. No.	Subject	Pages.
		plations under the constitution f India	
1.	O. No.C-96/11-2-53	Re: Authorisation of Bombay Govt. issued by Central Govt. as required by clause (1) of Article 299 for entering into agreement with Nepal Govt. regarding acquisition of Kaiser and Simrat Bajra, in Nepal	1-2
2.	C-512/26-8-53	Articles 303 and 305 Whether the Bombay Hay (Control) Order, clause 12 of the said order and the orders issued under the Bombay Hay (Control) Order are void and inoperative	3-12
3.	C-743/5-12-53	Re: Amount due Govt. from certain person on account of the arrears of the value of grain supplied to him Recovery of as arrears of Land Revenue. Whether detention for the recovery of the amount recoverable as arrears of land revenue though provided for in the Bombay Land Revenue Code would be illegal in view of the provisions of the constitution	13-16

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5 Cs.

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 Office of the R.L.A.

In their telegram of 20th January regarding procurement of Maize and Bajri in Pepsu the Government of India have asked the Government of Bombay to send as required by clause (1) of article 299 of the Constitution an authorisation for Central Government to enter into an agreement with the agencies of the Central Grain Dealers Coroperative Syndicate of Patiala on behalf of the Government of Bombay. The telegram then proceeds to request the State Government to Communicate their consent. It is not clear from this telegram whether the contract for procurement of the grains will be entered into by the Central Government or by the State Govt. If the contract is to be entered into by the Central Govt. then there is no question of any authorisation being granted under clause (1) of article 299 of the Constitution to enable the Central Government to enter into such contract; for that article makes no provision for such authorisation. If, however, the contract is to be entered into by the State Government, it will be necessary for the Governor of Bombay to authorise some officer to enter into such contract on his behalf. In that case that draft authorisation at page 13 as amended may be sent to the Central Government. It however, appears that the contract will be entered into by the Central Government and in that case all that is necessary would be for the State Government to give their consent to such contract. That consent can be given by a formal letter. As suggested by the Government of India, in the telegram referred to above, the better course would be to depute some office to the Government of India for settling thedetails of the transaction. That would save unnecessary correspondance and would expedite the matter.

Ad/P.M.IAD.
11/3

Remembrancer of Legal Affairs.

U.R. to P.A. & Addl Secy. C.S.D. No. G-96 dated the 11th February 1953.

Submitted.

2. Please see this office notes underlying R.L.A.'s opinion No. G-19,dated 7-1-1953 and the office note of the C.S.D. on pages 233-235 ante.

3. The facts of this case, in short, are as follows :-

A hay Commission agent's licence bearing No.E.66 was issued to one Shri Ramashankar Pranshankar Joshi in form 'E' appended to the Bombay Hay (Control) Order, 1951 for doing business at Andheri on his making an apllication in form 'A'. The Hay Inspector at Andheri found on going through the list of the Hay commission agent's that instead of the licensee, Shri Chintanand Upadhya along with one Shri Ramakant was managing the hay business. Shriyuts Chitanand and Ramashankar stated that they were doing business as partners of the firm. Shri Ramashankar further stated that he had informed the C.S.D. about his partnership with Shri Chintanand. A partnership deed executed on 9-9-51 was also produced by Shri Ramashankar under the terms of which Shri Chintanand was to manage the business and the licence and other documents were to stand in the name of Shri Ramashankar when asked to produce documentary evidence to prove his continuity in trade for twelve consecutive months during the years 1944-50 as required under clause 12(11)(a) of the Bombay Hay (Control) Order, 1951, Shri Chintanand stated that he had no other documentary evidence except the above said partnership deed. The R.L.A. was requested to advise whether Shri Chintanand could be allowed to conduct the business in hay under the licence of Shri Ramashankar under the partnership deed. The R.L.A. opined under the partnership deed his U.R. No.G-19 dated 7-1-53 that the licensing authority would recognise Shri Ramashankar as the licensee as the licence stood

in his name and that the parties might be asked to apply for the licence being issued in the name of a firm with Shri Ramashankar and Shri Chintanand as partners otherwise the licence would have to be cancelled as the licensee was indirectly traffisking on the licence. As per this opinion of the R.L.A., the special Officer (Licenses) who is the licensing authority for Greater Bombay cancelled the licence granted to Shri Ramashankar and ordered forfeiture of his deposit amounting to Rs. 300/- for leasing his licence unauthorizedly to one Shri Chintanand under his order dated 21-1-1953 issued under clauses 15(1) and 18(11) of the Bombay Hay (Control) Order, 1951 read with the Government Notification C.S.D. No. 34/Hay(f), dated 24-8-51. Against this order, Shri Ramashankar appealed to the Minister for Civil Supplies. Shri Chintanan also appealed to the Dy. Minister for Civil Supplies against the said order of the S.O.(L) on the grounds that without a licence he would be put to a loss amounting to Rs. 1500/- (invested by him) and that the order of cancellation was not correct as the C.S.D. knew of his partnership in business with the licensee. As per the decision of the Dy. M. for C.S. Shri Chintanand was informed that his request for a licence inhis name or in the firm's name could not be granted as the licence had been issued in the name of Shri Ramashankar in his individual capacity. Further the licence of Shri Ramashankar was suspended and deposit forfeited by the S.O.(L) under his order dated 29-5-53 issued in supersession of his order dated 21-1-53. Shri Chintanand has now requested the D.C.S. Bombay through his pleader, Shri S.K.Patel. to reconsider the matter and grant him a new licence. He has further stated that clause 12 of the B.H.(C) Order, is null and void as it contravenes article 19(1)(g) of the Constitution of India in as much as it prohibits the issue of licence to one who has not been

in trade for twelve months before 1950, that the order dated 23-8-52 requiring him to produce documentary evidence to prove his continuity in trade between 1944 and 1950 as well as the order dated 11-5-53 informing him that a licence could not be granted to him, were void and without any legal authority and that the Bombay Hay (Control) Order, 1951 is illegal void and inoperative in as much as it imposes restrictions on inter State trade and therefore contravenes Article, 303-305 of the constitution of India. He has threatened to take legal proceedings against the State of Bombay if his request for a licence is not granted. The C.S.D. does not wish to issue a licence to Shri Chintanand. The C.S.D. has therefore requested this office to opine whether the party's contention that the S.R.(C) O. clause 12 of the said order and the 2 orders issued under the Bombay Hay (Control) Order were void and inoperative. is correct.

The Advocate on behalf of Shri Chintanand and Shri Ramashankar Joshi has contended as follows :-

(i) the order dated the 23rd August 1952 and the order dated the 11th May 1953 are both illegal and passed malafide without lawful authority; and

(ii) clause 12 of the Bombay Hay (Control) Order, 1951 is void under Article 19(f)(G) and Articles 303 to 305 of the Constitution of India in as much as it prohibits the issue of licence to any person who wants to trade after 1950 but who has not been in business for twelve consecutive months continuously from 1944 to 1950 and also imposes restrictions on inter State trade and commerce.

The order dated the 23rd August 1952 referred to by the Advocate is a letter written to Shri Chintanand by the Director of Civil Supplies, Bombay asking him to produce documentary evidence to prove his continuity in trade for twelve consecutive months during the years 1944 to 1950 as required by clause 12(ii)(a) of the Bombay Hay (Control) Order, 1951 and to establish his eligibility to trade in partnership with Shri Ramshankar Joshi. The order dated the 11th May 1953 is a letter written by the Director of Civil Supplies to Shri Chintanand informing him that as the licence was granted to Shri Ramashankar Joshi in his individual capacity and not in the name of the firm, his request for the grant of a separate licence in his name or in the name of the company cannot be considered. Clause 12(ii)(a) of the Bombay Hay (Control) Order 1951, provides that no hay commission agents licence shall be granted to any person who in the opinion of the licensing authority was not carrying on hay commission agent's business continuously for any twelve months during the years 1944 to 1950. However sub-clause (b) of clause 12(ii) provides that notwithstanding the above provision the State Government may grant such a licence to

any person for special reasons to be recorded in writing. On 21st January 1953, the licence granted to Shri Joshi was cancelled and the deposit forfeited as the licensee leased the licence to Shri Chintanand who had no eligibility for trading in hay. This conclusion was arrived at as the partnership deed dated the 9th September 1951 was considered by the Licensing Authority as an after thought because if it was really made on that date Shri Joshi would have referred to it in his application for a licence which was made after that date. The above orders of cancellation were modified on the 29th May 1953, and it was ordered that the licence held by Shri Joshi should remain suspended for a period of six months from 29th May 1953 in lieu of cancellation and Shri Joshi was warned that, if he was again found entrusting the business to others by himself remaining a sleeping partner, the licence would be cancelled and deposit forfeited. The orders refusing to transfer the license in the name of Shri Chintanand are legal and proper in that when the partnership was entered into on the 9th September 1951, no mention was made of it in the application dated the 8th January 1952. On the licence the date is 24th October 1951 but that is the date on which the licences were written. The licence was received by the partyeamon 21st January 1952. After due enquiries were made, the Licensing Authority, convinced that there was trafficking in licence by Shri Joshi and under clause 12 of the Bombay Hay (Control) Order, 1951, the licensing Authority refused to recognise Shri Chintanand as licensee as because he did not satisfy the eligibility test laid down in clause 212(ii)(a). The orders dated the 23rd August 1952 and the 11th May 1953 are therefore not illegal or without lawful authority.

The next question is whether clause 12(ii)(a) offends against Article 19(1)(d) and (g) and articles 303 to 305

of the Constitution of India. Clause (5) and (6) of Article 19 provide that nothing in sub-clauses (f) and (g) of clause (1) shall affect the operation of any existing law in so far as it imposes or prevent the State from imposing reasonable restrictions on the exercise of the right conferred by the said sub-clauses in the interest of the general public. The phrase "reasonable restrictions" connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interest of the public. The provision to grant licences only to persons who were in the trade during the years preceding the control was made with a view to eliminate persons who did not know anything about the hay trade but who wanted to stake advantage of the control under the guise of a licence. The idea was that trade should be kept in the hands of real traders who had stake in the business and who would not create chaos. This would be considered as a reasonable restriction by any court. Articles 303 to 305 which are also referred to by the Advocate relate to inter State trade and the commerce and are not applicable to the Bombay Hay (Control) Order, 1951 which regulates hay trade in the State of Bombay only.

Sd/

Secretary to Government.

U.R. to G.S.D. No. G- 512, dated the 26th August 1953.

VGP. 14-8-56.-

Submitted with reference to C.S.D. note dt/22-10-53

It appears that certain amount is due to Govt. fro Shri D.K. Masurkar on account of the arrears of the value of grain supplied to his R.D.C. As Shri Masurkar was avoiding to pay these dues he has been arrested and detained in the Civil Jail, Kolhapur under section 157 of the Bombay Land Revenue Code as the dues were recoverable as arrears of land revenue. Properties of his three sureties have also been attached for the purpose of recovering the dues. But as these properties are small as compared to the amount recoverable and as much time has elapsed since detention and as Govt. is incurring expenditure on account of detention with no likelihood of the recoveries being made, Govt has called for a report from the Collector regarding the possibility of recoveries being made if detention is further extended. The Supply Commissioner has raised the question whether detention for the recovery of the amount recoverable as arrears of land revenue though provided for in the Bombay Land Revenue Code would be legal in view of the provisions of the Constitution.

In the recent case of the State of Punjab v. Ajaib Singh (1953 S.C.R. 254) the Supreme Court has considered the question of arrest and detention which come within the meaning of article 22 of the Constitution. According to the decision of the Supreme Court in that case, the fundamental right conferred by article 22 gives protection against such arrests as are effected otherwise than under a warrant issued by a Court on the allegation or accusation that the arrested person has, or is suspected to have, committed or is about or likely to commit an act of a criminal or quasi-criminal nature or some activity prejudicial to the public or the State interest. It is true that the Supreme Court has held that the right conferred by article 22, gives protection against such arrests as are effected otherwise than under a warrant issued by a Court, but the principle underlying the decision is that in cases where no warrant is issued the person arrested does not know the grounds on which he has been arrested. In the judgement the Supreme Court has referred to the provisions of Order XXXVIII, Rule 1 of the Civil Procedure Code, which authorises the Court to issue a warrant for the arrest of a defendant before judgement in certain circumstances, and has observed that a warrant of arrest issued by a Court under the Civil Procedure Code, quite plainly discloses the reason for the arrest in that it sets out an accusation of default; apprehended or actual, and that the person to be arrested is made acquainted with the reasons for his arrest before he is actually arrested. It is for this reason that no protection is given against the arrest

arrest under the Civil Procedure Code by article 22. In the case of an arrest under section 157 of the Land Revenue Code the defaulter who is arrested knows the reasons why he has been arrested and detained in custody or imprisonment. Para, 2 of that section empowers the Collector to send on the defaulter for detention in a civil jail with a warrant in the form of Schedule C. The warrant in the form of Schedule C, sets out the reason why the defaulter is ordered to be imprisoned in a civil jail. In view of these provisions in section 157 of the Land Revenue Code, article 22, will not give protection against the arrest and detention under that section. Moreover, in a case under section 157 there is no allegation or accusation that the arrested person has, or is suspected to have, committed or is about or likely to commit an act of a criminal or quasi-criminal nature or any activity prejudicial to the public or the State interest. In such cases, therefore, no refusal purpose would be served by producing the arrested person before a Magistrate for a Magistrate will have no jurisdiction in such cases to order further detention of the arrested person in custody. Section 157 does not, therefore, infringe the fundamental right guaranteed by Article 22 of the Constitution.

Sd/P.M.LAD.
4/12

Remembrancer of Legal Affairs.

U.R. to C.S.D.No. G-748/ dated the 5th December 1953.

VJP. 14-8-56.